UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,751	11/17/2003	Jason G. Lang	117P1846US01	3348

7590 11/21/2008

IPLM Group, P.A.
Post Office Box 18455
Minneapolis, MN 55418

EXAMINER
ROWAN, KURT C

ART UNIT	PAPER NUMBER
3643	

MAIL DATE	DELIVERY MODE
11/21/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JASON G. LANG and THOMAS D. NELSON

Appeal 2008-5134
Application 10/714,751
Technology Center 3600

Decided: November 21, 2008

Before ERIC GRIMES, RICHARD M. LEBOVITZ, and JEFFREY N. FREDMAN, *Administrative Patent Judges*.

FREDMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to a rodent trap. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

Statement of the Case

Background

"Controlling and catching pests, including rodents, is an issue for many facilities, especially for commercial entities in the food industry" (Spec. 1:9-10). The Specification notes that "traps are often placed along such intersections to capture rodents as they travel along the intersections. Additionally, it is desirable to place rodent traps in proximity to points of entry to intercept rodents before or shortly after they enter a facility" (Spec. 1:19-22). According to the Specification "it is desired to make a rodent trap that is easily accessible and discrete [sic] in appearance, whether located inside or outside a building" (Spec. 2:10-11).

Appellants invented a rodent trap with a "trap assembly provides access to [a] cavity, and the trap assembly allows the rodent to enter the cavity and prevents the rodent from exiting the cavity. A removable insert receptacle is configured and arranged to be housed within the cavity proximate the trap assembly." (Spec. 2:23-25; claim 1).

The Claims

Claims 1-48 are on appeal. We will focus on claims 1 and 4, which are representative and read as follows:

> 1. A rodent trap, comprising:
> a) a wall portion, a floor portion, a front portion, a top portion, and sides configured and arranged to define a cavity, said wall portion and said front portion being interconnected by said floor portion, said top portion, and said sides;

b) said cavity being between said wall portion and said front portion and configured and arranged to contain a rodent;

c) a trap assembly providing access to said cavity, said trap assembly allowing the rodent to enter said cavity and preventing the rodent from exiting said cavity, the wall portion, the floor portion, the front portion, the top portion, the sides, and the trap assembly forming an area of confinement in which the rodent is trapped to prevent escape of the rodent from the cavity; and

d) a removable insert receptacle configured and arranged to be housed within said cavity proximate said trap assembly, said removable insert receptacle being configured and arranged to contain the rodent within said cavity, wherein said removable insert receptacle is made of a non-destructible material thereby further preventing escape of the rodent.

4. The rodent trap of claim 1, further comprising climbing assisting members interconnecting said floor portion and said trap assembly, said climbing assisting members being positioned between said wall portion and said front portion, between said floor portion and said top portion, and between said sides and being enclosed therebetween, said trap assembly being elevated and said climbing assisting members assisting the rodent in accessing said trap assembly and entering said cavity, wherein said trap assembly provides an only entrance into said cavity thereby hindering contaminants from entering said cavity through said elevated trap assembly, the wall portion, the floor portion, the front portion, the top portion, the trap assembly, and the climbing assisting members forming an area of confinement in which the rodent is trapped to prevent escape of the rodent from the cavity.

The prior art

The Examiner relies on the following prior art references to show unpatentability:

Souza	U.S. 4,138,796	Feb. 13, 1979
Celestine	U.S. 6,016,623	Jan. 25, 2000
Denny	U.S. 6,389,738 B1	May 21, 2002

The issue

The Examiner rejected claims 1, 2, 4-9, and 11-48 under 35 U.S.C. § 103(a) as being obvious over Celestine and Souza (Ans. 3).

Appellants contend that a "rodent box 40 is required in Celestine for the trap assembly to function properly. The Examiner has equated the rodent box 40 of Celestine with the removable insert receptacle . . . but the removable insert receptacle does not form the area of confinement unlike the required rodent box 40 of Celestine" (App. Br. 36). Appellants also contend that

> simply putting the door movement operation of Souza on the rodent trap of Celestine would not result in the present invention because without the rodent box 40, the rodent would escape through the insertion opening 18. Similarly, without the holding unit 14 of Souza, the rodent would escape through the exit opening 30 and the passageway means 74.

(App. Br. 36). Appellants "submit that neither Celestine nor Souza contemplate using a rodent trap without the rodent box 40 or the holding unit 14, respectively. Therefore, there is no teaching, suggestion, or motivation to combine these references as suggested" (App. Br. 37).

The Examiner finds that "Celestine shows the cavity . . . under trap door 30 for containing the rodent but also precludes the rodent from exiting. All the other recited elements such as the wall portion[,] the floor portion, the front portion, the top portion, the sides also . . . prevent the escape of the rodent from the cavity" (Ans. 6). The Examiner also finds that "once the doors 32, 34 of Souza are closed, the animal is trapped. The animal can be in compartment 18 or 14. Souza . . . uses a flashing light to induce the animal to go into the holding unit and once that occurs, door 58 closes to retain the animal in the holding unit" (Ans. 8). The Examiner finds that the "proposed combination does not result in the trap of Celestine being used without the removable insert, but closing off the upper section of the trap in the same fashion that Souza closes the open doors 32, 34 to the housing unit 18." (Ans. 9).

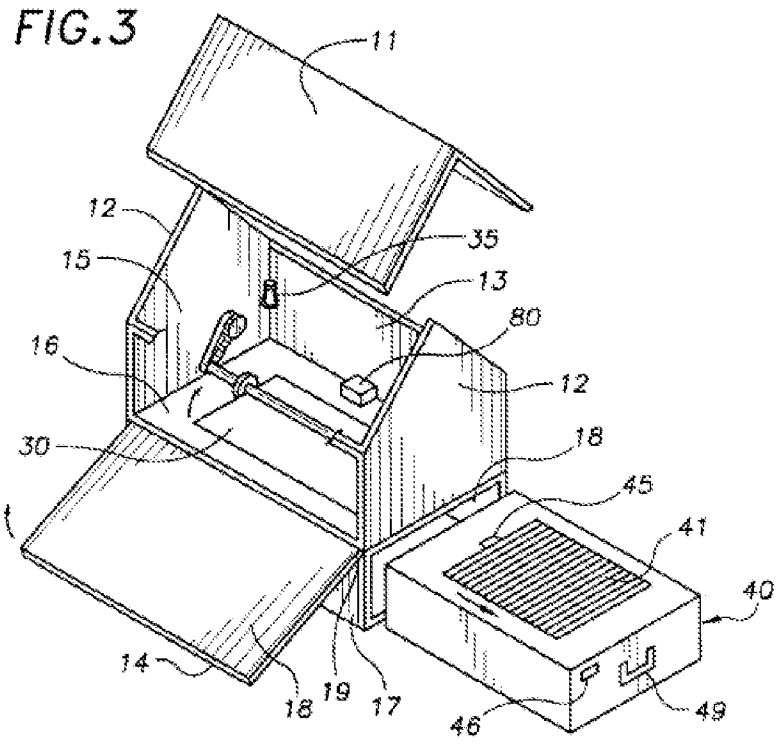
In view of these conflicting positions, we frame the obviousness issue before us as follows:

Did the Examiner err in finding that it would have been obvious to an ordinary skilled artisan to modify the rodent trap assembly of Celestine to include a door over the opening into which the removable insert receptacle is inserted?

Findings of Fact (FF)

1. Celestine teaches "an electrically operated automated trap for rodents such as rats or mice" (Celestine, col. 3, ll. 9-10).

2. Celestine teaches a model of the rodent trap, as shown in figure 3 reproduced below:



"FIG. 3 is an isometric view of the rodent trap with the top removed" (Celestine, col. 2, ll. 52-53).

3. Celestine teaches a rodent trap "which includes a housing comprising a removable roof **11**, permanent left and right side walls **12**, a back wall **13**, and a swinging front wall **14** which also serves as a rodent entry ramp for rodents to easily walk into the interior **15** of the housing" (Celestine, col. 3, ll. 29-33).

4. Celestine teaches that the "floor of the housing **16** has a trap door **30** centrally positioned thereon" (Celestine, col. 3, ll. 33-34).

5. Celestine teaches that a "removable rodent box is positioned below the trap door and has a open top that is covered by a segmented cover

that travels in opposing guides in the rodent box frame. The cover is biased to springingly remain in a closed position" (Celestine, col. 3, ll. 17-20).

6. Celestine teaches that the "entire housing is preferably constructed of injected molded ABS plastic or any other suitable polymer" (Celestine, col. 3, ll. 36-38).

7. Celestine teaches that the "rodent box allows the user to remove the box from the trap and empty the rodent from the box in a remote location if desired. The rodent box also includes a handle **49** for easily handling the box" (Celestine, col. 3, ll. 61-64).

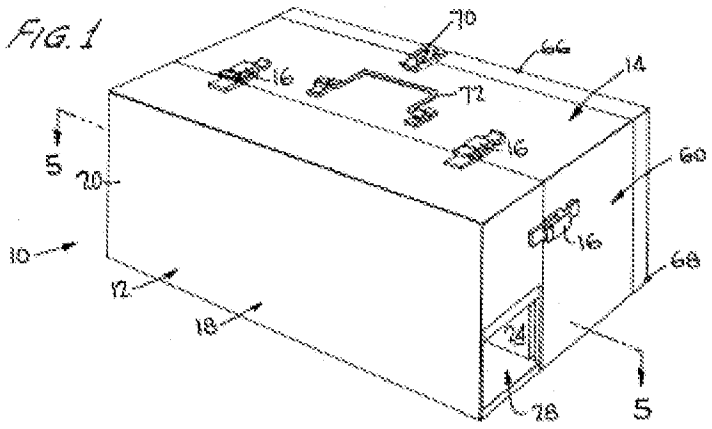
8. Celestine teaches that "ramp **14** preferably includes a frictional surface **18** so that a rodent can easily walk into the trap without becoming discouraged" (Celestine, col. 3, ll. 38-40).

9. Souza teaches "a mouse or rat trap adapted to catch and confine a number of animals while automatically resetting itself" (Souza, col. 1, ll. 6-8).

10. Souza teaches a "holding unit means **14** [which] comprises basically a housing **60** which defines within it a holding unit compartment **62** having a holding unit entry opening **64** and . . . including a cover member **66** hinged at one edge **68** . . . to provide access to the holding unit compartment **62** for removal of captured animals" (Souza, col. 3, ll. 25-30).

11. Souza teaches that "preferably, the entire holding unit **14** may be separated from the capture unit **12** and replaced by an empty holding unit . . . so that the animals can be removed and disposed of in any desired manner" (Souza, col. 5, ll. 63-67).

12. Souza teaches a rodent trap as shown in figure 1, reproduced below:



"FIG. **1** is a perspective view of one embodiment of the repeating trap assembly according to the instant inventive concept" (Souza, col. 2, ll. 16-18).

13. The Examiner found that "Celestine does show a climbing assist member as a friction surface 18 on ramp 14" (Ans. 5).

14. The Examiner found, based on the teaching of Celestine (FF 13) and the knowledge of the ordinary artisan, that "it would have been obvious to employ a climbing assist member or members anywhere in the interior of the trap where it is deemed desirable" (Ans. 5).

Principles of Law

Claim terms are interpreted using the broadest reasonable interpretation in light of the Specification. *See, e.g., In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000) ("[D]uring examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification."). *Also see In re Morris*, 127 F.3d 1048, 1054-56 (Fed. Cir. 1997). "Absent an express definition in their specification, the fact that

appellants can point to definitions or usages that conform to their interpretation does not make the PTO's definition unreasonable when the PTO can point to other sources that support its interpretation." *Id.* at 1056.

In *KSR*, the Supreme Court stated that

> [t]he principles underlying these cases are instructive when the question is whether a patent claiming the combination of elements of prior art is obvious. When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability.

KSR Int'l v. Teleflex Inc., 127 S. Ct. 1727, 1740 (2007).

Analysis

Discussion of the 35 U.S.C. § 103(a) rejection over Celestine and Souza

Claim 1

Celestine teaches a rodent trap with a wall portion, floor portion, a front portion, a top portion and sides arranged to form a cavity (FF 1-4). Celestine teaches that the cavity has an insertion opening 18, as shown in figure 3, into which the removable rodent box 40 is inserted (FF 2, 3, 5). After insertion of the rodent box 40, Celestine teaches that the trap door assembly provides access to the cavity, permitting the rodent to enter the cavity and preventing the rodent from exiting the cavity (FF 4). Celestine teaches that rodent box 40 is a removable insert that is housed within the cavity, proximate to the trap assembly (FF 7). Celestine teaches that the rodent box 40 is made of a non-destructible material (FF 6).

Souza teaches a rodent trap with a wall portion, floor portion, a front portion, a top portion and sides arranged to form a cavity (FF 9-10). Souza teaches a cavity which is configured to contain a rodent and a trap assembly which provides access to the cavity and prevents the rodent for exiting the cavity (FF 12). Souza teaches a removable insert receptacle which contains the rodent (FF 11).

Applying the *KSR* standard of obviousness to the findings of fact, it would have been obvious to modify the rodent trap assembly of Celestine to include a door over the opening into which the removable insert receptacle is inserted in view of Souza (FF 1-12). The combination of Celestine and Souza uses known elements and combines them in predictable ways. Such a combination is merely a "predictable use of prior art elements according to their established functions." *KSR*, 127 S. Ct. at 1740.

Appellants "submit that the removable insert receptacle of the claimed invention is not required to contain the rodent and is not required to form an area of confinement in which the rodent is trapped to prevent escape of the rodent from the cavity." (App. Br. 34). We do not find this contention persuasive since the claim does not exclude the insert receptacle from containing the rodent (*see* claim 1). Claim 1, as reasonably interpreted, encompasses the situation where the removable insert receptacle forms an area of confinement in which the rodent is trapped, as taught by Souza and Celestine (FF 5, 7, 11).

We are not persuaded by Appellants' contention that "neither Celestine nor Souza contemplate using a rodent trap without the rodent box 40 or the holding unit 14" (App. Br. 35). Appellants' contention is also not

directed to claim 1, which does not include any limitation that suggests that the trap operate without the removable insert receptacle. Celestine's rodent box 40, for example, is a removable receptacle within a cavity which contains the rodent within the cavity (FF 2-5). The claim lacks the argued limitation. *See In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004) ("Absent claim language carrying a narrow meaning, the PTO should only limit the claim based on the specification or prosecution history when those sources expressly disclaim the broader definition").

Claim 4

Appellants contend that the "purpose of the ramp 14 of Celestine is to open and close the rodent trap. The ramp 14 would not be able to open and close the rodent trap if arranged as suggested and would destroy the intended function of the ramp 14" (App. Br. 40). However, the Examiner found that "Celestine does show a climbing assist member as a friction surface 18 on ramp 14" (Ans. 5; FF 13). The Examiner further found that "it would have been obvious to employ a climbing assist member or members anywhere in the interior of the trap where it is deemed desirable" (Ans. 5; FF 14). We agree with the Examiner that it would have been obvious to the ordinary artisan to place climbing assist members in any location of the trap as desired by the creative person of ordinary skill. "[T]he analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR*, 127 S.Ct. at 1741.

Discussion of the 35 U.S.C. § 103(a) rejection over Celestine, Souza, and Denny

The Examiner rejected claims 3 and 10 rejected under 35 U.S.C. § 103(a) as obvious over Celestine, Souza, and Denny (Ans. 5-6).

Appellants do not separately argue these claims. We select claim 3 to decide the issues in this rejection. Claim 3 is to the method of claim 1, but further recites that the rodent trap comprises "a glue board contained within said removable insert receptacle" (*see* claim 3). The Examiner found that the "patent to Denny shows a trap 20 having a glue board" (Ans. 6). The Examiner concluded that "it would have been obvious to provide Celestine with a glue board as shown by Denny to retain the rodents in the removable insert receptacle" (Ans. 6).

As we agree with the Examiner's findings and conclusion, and Appellants do not provide arguments or evidence to rebut it, we affirm the rejection of claim 3. Claim 10 falls with claim 3 as separate arguments for their patentability were not provided. 37 C.F.R § 41.37(c)(vii)(1).

Conclusions of Law

Appellants have not shown that the Examiner erred in concluding that it would have been obvious to an ordinary artisan to modify the rodent trap assembly of Celestine to include a door over the opening into which the removable insert receptacle is inserted in view of Souza.

SUMMARY

In summary, we affirm the rejection of claims 1 and 4 under 35 U.S.C. § 103(a) over Celestine and Souza. Pursuant to 37 C.F.R.

§ 41.37(c)(1)(vii)(2006), we also affirm the rejections of claims 2, 5-9, and 11-48 as these claims were not argued separately. We also affirm the rejection of claim 3 under 35 U.S.C. § 103(a) over Celestine, Souza, and Denny. Pursuant to 37 C.F.R. § 41.37(c)(1)(vii)(2006), we also affirm the rejections of claim 10 as this claim was not argued separately.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2006).

AFFIRMED

lp

IPLM GROUP, P.A.
POST OFFICE BOX 18455
MINNEAPOLIS, MN 55418